

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

WILLIAM BLAKE,

Petitioner,

-vs-

WARDEN, Southern Ohio Correctional  
Facility,

Respondent.

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Case No. 3:07-cv-075

:

District Judge Walter Herbert Rice  
Chief Magistrate Judge Michael R. Merz

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**DECISION AND ORDER GRANTING IN PART AND DENYING IN PART  
PETITIONER'S MOTION FOR DISCOVERY AND ADMISSION**

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This habeas corpus action is before the Court on Petitioner's Request for Discovery and Admission (Doc. No. 6).

A habeas petitioner is not entitled to discovery as a matter of course, but only upon a fact-specific showing of good cause and in the Court's exercise of discretion. Rule 6(a), Rules Governing §2254 Cases; *Bracy v. Gramley*, 520 U.S. 899 (1997); *Harris v. Nelson*, 394 U.S. 286, 89 S. Ct. 1082, 22 L. Ed. 2d 281 (1969); *Byrd v. Collins*, 209 F. 3<sup>rd</sup> 486, 515-16 (6<sup>th</sup> Cir. 2000). Before determining whether discovery is warranted, the Court must first identify the essential elements of the claim on which discovery is sought. *Bracy*, citing *United States v. Armstrong*, 517 U.S. 456, 116 S. Ct. 1480, 1488, 134 L. Ed. 2d 687 (1996).

In his Request, Petitioner has alleged that the materials he seeks are "relevant" to his claims, but relevance alone is insufficient. On the other hand, all materials sought by Petitioner which are

part of the trial or appellate court record in this case should be attached to the Respondent's Answer when it is filed. Respondent's counsel is requested to be especially attentive to Petitioner's requests when selecting the portions of the state court record to file. The Court notes that the materials listed in Requests No. 3 and 4 may or may not be in the care, custody, or control of the Montgomery County Clerk of Courts.

Finally, the Court notes that, because there is no automatic right to discovery in habeas corpus proceedings, Petitioner's demand that the documents be produced within thirty days (as if the Request were made under Fed. R. Civ. P. 34) has no binding force.

In sum, the Request is denied without prejudice to its renewal in accordance with the legal standards under Habeas Rule 6, after Petitioner has examined the documents produced as part of the Answer.

April 5, 2007.

s/ **Michael R. Merz**  
Chief United States Magistrate Judge